

House Bill 1064

By: Representatives Jackson of the 64th, Bazemore of the 63rd, Schofield of the 60th, Kendrick of the 93rd, Burnough of the 77th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16, 20, and 31 of the Official Code of Georgia Annotated, relating to crimes
2 and offenses, education, and health, respectively, so as to revise and provide certain
3 definitions regarding the sale or distribution to, or possession by, minors of cigarettes,
4 tobacco, tobacco related objects, and vapor products to include vapor products that do not
5 contain nicotine; to increase the age of individuals to which sales or distribution of such
6 products and marijuana flavored products are prohibited; to allow for the enactment of more
7 restrictive prohibitions on activities related to tobacco products; to amend the "Georgia
8 Smoke-free Air Act of 2005" to include electronic smoking devices; to change the short title
9 of such Act and to make conforming changes to the penalty and other provisions related to
10 such Act; to provide for related matters; to provide for an effective date and for applicability;
11 to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**PART I**
14 style="text-align:center">**SECTION 1-1.**

15 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
16 amended by revising Article 7 of Chapter 12, relating to sale or distribution to, or possession
17 by, minors of cigarettes and tobacco related objects, as follows:

18 style="text-align:center">"ARTICLE 7

19 16-12-170.

20 As used in this article, the term:

21 (1) 'Alternative nicotine product' means any noncombustible product containing nicotine
22 that is intended for human consumption, whether chewed, absorbed, dissolved, or
23 ingested by any other means. ~~The~~ Such term 'alternative nicotine product' shall not

24 include any tobacco product, vapor product, or any product regulated as a drug or device
 25 by the United States Food and Drug Administration under Chapter V of the Food, Drug,
 26 and Cosmetic Act.

27 (2) 'Cigar wraps' means individual cigar wrappers, known as wraps, blunt wraps, or roll
 28 your own cigar wraps, that consist in whole or in part of reconstituted tobacco leaf or
 29 flavored tobacco leaf.

30 (3) 'Cigarette' means roll for smoking made wholly or in part of tobacco when the cover
 31 of the roll is paper or any substance other than tobacco.

32 (4) 'Community service' means a public service which ~~a minor~~ an individual under the
 33 age of 21 years might appropriately be required to perform, as determined by the court,
 34 as punishment for certain offenses provided for in this article.

35 ~~(5) 'Minor' means any person who is under the age of 18 years.~~

36 ~~(6)~~(5) 'Person' means any natural person or any firm, partnership, company, corporation,
 37 or other entity.

38 ~~(7)~~(6) 'Proper identification' means any document issued by a governmental agency
 39 containing a description of the person, such person's photograph, or both, and giving such
 40 person's date of birth and includes, without being limited to, a passport, military
 41 identification card, driver's license, or an identification card authorized under Code
 42 Sections 40-5-100 through 40-5-104. Proper identification shall not include a birth
 43 certificate.

44 ~~(8)~~(7) 'Tobacco product' means any cigars, little cigars, granulated, plug cut, crimp cut,
 45 ready rubbed, and other smoking tobacco; snuff or snuff powder; cavendish; plug and
 46 twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings,
 47 cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in
 48 such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both
 49 for chewing and smoking. ~~The~~ Such term ~~'tobacco product'~~ shall not include any
 50 alternative nicotine product, vapor product, or product regulated as a drug or device by
 51 the United States Food and Drug Administration under Chapter V of the Food, Drug, and
 52 Cosmetic Act.

53 ~~(9)~~(8) 'Tobacco related objects' means any papers, wrappers, or other products, devices,
 54 or substances, including cigar wraps, which are used for the purpose of making cigarettes
 55 or tobacco products in any form whatsoever.

56 ~~(10)~~(9) 'Vapor product' means ~~any noncombustible product containing nicotine that~~
 57 ~~employs a heating element, power source, electronic circuit, or other electronic, chemical,~~
 58 ~~or mechanical means, regardless of shape or size, that can be used to produce vapor from~~
 59 ~~nicotine in a solution or other form. The term 'vapor product' shall include any electronic~~
 60 ~~cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or~~

61 ~~device and any vapor cartridge or other container of nicotine in a solution or other form~~
 62 ~~that is intended to be used with or in an electronic cigarette, electronic cigar, electronic~~
 63 ~~cigarillo, electronic pipe, or similar product or device~~ any device that may be used to
 64 deliver an aerosolized or vaporized substance to an individual inhaling from the device,
 65 including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo,
 66 electronic pipe, vape pen, hookah, or electronic hookah. Such term shall include any
 67 component, part, or accessory of the device and any substance intended to be aerosolized
 68 or vaporized during the use of the device, regardless of whether or not the substance
 69 contains nicotine. ~~The~~ Such term 'vapor product' shall not include any product regulated
 70 as a drug or device by the United States Food and Drug Administration under Chapter V
 71 of the Food, Drug, and Cosmetic Act.

72 16-12-171.

73 (a)(1) It shall be unlawful for any person knowingly to:

74 (A) ~~Directly Sell or barter, directly or indirectly, sell, barter, or distribute~~ any
 75 cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or
 76 vapor products to a ~~minor~~ any individual under the age of 21 years;

77 (B) Purchase any cigarettes, tobacco products, tobacco related objects, alternative
 78 nicotine products, or vapor products for any ~~minor unless the minor for whom the~~
 79 ~~purchase is made is the child of the purchaser~~ individual under the age of 21 years; or

80 (C) Advise, counsel, or compel any ~~minor~~ individual under the age of 21 years to
 81 smoke, inhale, chew, or use cigarettes, tobacco products, tobacco related objects,
 82 alternative nicotine products, or vapor products.

83 (2)(A) The prohibition contained in paragraph (1) of this subsection shall not apply
 84 with respect to sale of cigarettes, tobacco products, tobacco related objects, alternative
 85 nicotine products, or vapor products by a person when such person has been furnished
 86 with proper identification showing that the ~~person~~ individual to whom the cigarettes,
 87 tobacco products, tobacco related objects, alternative nicotine products, or vapor
 88 products are sold is ~~18~~ 21 years of age or older.

89 (B) ~~In any case where a reasonable or prudent person could reasonably be in doubt as~~
 90 ~~to whether or not the person to whom cigarettes, tobacco products, tobacco related~~
 91 ~~objects, alternative nicotine products, or vapor products are to be sold or otherwise~~
 92 ~~furnished is actually 18 years of age or older, it~~ It shall be the duty of the a person prior
 93 to selling or otherwise furnishing such cigarettes, tobacco products, tobacco related
 94 objects, alternative nicotine products, or vapor products to request to see and to be
 95 furnished with proper identification as provided for in subsection (b) of this Code
 96 section in order to verify the age of that such person individual is 21 years of age or

97 ~~older. The failure to make such request and verification in any case where the person~~
 98 ~~to whom the cigarettes, tobacco products, tobacco related objects, alternative nicotine~~
 99 ~~products, or vapor products are sold or otherwise furnished is less than 18 years of age~~
 100 ~~may be considered by the trier of fact in determining whether the person selling or~~
 101 ~~otherwise furnishing such cigarettes, tobacco products, tobacco related objects,~~
 102 ~~alternative nicotine products, or vapor products did so knowingly.~~

103 (3) Any person who violates this subsection shall be guilty of a misdemeanor.

104 (b)(1) It shall be unlawful for any ~~minor~~ individual under the age of 21 years to:

105 (A) Purchase, attempt to purchase, or possess for personal use any cigarettes, tobacco
 106 products, tobacco related objects, alternative nicotine products, or vapor products. This
 107 subparagraph shall not apply to possession of cigarettes, tobacco products, tobacco
 108 related objects, alternative nicotine products, or vapor products by a ~~minor~~ any
 109 individual under the age of 21 years when a parent or guardian of such ~~minor~~ individual
 110 gives the cigarettes, tobacco products, tobacco related objects, alternative nicotine
 111 products, or vapor products to the ~~minor~~ individual under the age of 21 years and
 112 possession is in the home of the parent or guardian and such parent or guardian is
 113 present; or

114 (B) Misrepresent ~~such minor's~~ his or her identity or age or use any false identification
 115 for the purpose of purchasing or procuring any cigarettes, tobacco products, tobacco
 116 related objects, alternative nicotine products, or vapor products.

117 (2) Punishment for an individual under the age of 21 years ~~A minor~~ who commits an
 118 offense provided for in paragraph (1) of this subsection may be ~~punished~~ as follows:

119 (A) Performing ~~By requiring the performance of~~ community service not exceeding 20
 120 hours;

121 (B) Attending ~~By requiring attendance at~~ a publicly or privately sponsored lecture or
 122 discussion on the health hazards of smoking or tobacco use, provided such lecture or
 123 discussion is offered without charge to ~~the minor~~ such individual; or

124 (C) A ~~By~~ a combination of the punishments described in subparagraphs (A) and (B)
 125 of this paragraph.

126 16-12-172.

127 (a) Any person owning or operating a place of business in which cigarettes, tobacco
 128 products, ~~or~~ tobacco related objects, alternative nicotine products, or vapor products are
 129 sold or offered for sale shall post in a conspicuous place a sign which shall contain the
 130 following statement:

131 'SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, TOBACCO
 132 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR

133 PRODUCTS TO PERSONS UNDER ~~18~~ 21 YEARS OF AGE IS PROHIBITED BY
 134 LAW.'

135 Such sign shall be printed in letters of at least one-half inch in height.

136 (b) Any person who fails to comply with the requirements of subsection (a) of this Code
 137 section shall be guilty of a misdemeanor.

138 16-12-173.

139 (a)(1) Any person who maintains in such person's place of business a vending machine
 140 which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine
 141 products, or vapor products shall place or cause to be placed in a conspicuous place on
 142 such vending machine a sign containing the following statement:

143 'THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, TOBACCO
 144 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR
 145 PRODUCTS FROM THIS VENDING MACHINE BY ANY PERSON UNDER ~~18~~ 21
 146 YEARS OF AGE IS PROHIBITED BY LAW.'

147 (2) Any person who maintains in such person's place of business a vending machine
 148 which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine
 149 products, or vapor products shall not dispense any other type of product, other than
 150 matches, in such vending machine.

151 (b) Any person who fails to comply with the requirements of subsection (a) of this Code
 152 section shall be guilty of a misdemeanor; provided, however, for a first offense, the
 153 sentence shall be a fine not to exceed \$300.00.

154 (c) It shall be a violation of subsection (a) of Code Section 16-12-171 for any person
 155 knowingly to allow ~~a minor~~ an individual under the age of 21 years to operate a vending
 156 machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative
 157 nicotine products, or vapor products.

158 (d) The offenses provided for by paragraph (1) of subsection (b) of Code Section
 159 16-12-171 shall apply to the operation by ~~a minor~~ an individual under the age of 21 years
 160 of a vending machine which dispenses cigarettes, tobacco products, tobacco related objects,
 161 alternative nicotine products, or vapor products.

162 (e)(1) The sale or offering for sale of cigarettes, tobacco products, tobacco related
 163 objects, alternative nicotine products, or vapor products from vending machines shall not
 164 be permitted except:

165 (A) In locations which are not readily accessible to ~~minors~~ individuals under the age
 166 of 21 years, including, but not limited to:

167 (i) Factories, businesses, offices, and other places which are not open to the general
 168 public;

- 169 (ii) Places open to the general public which do not admit ~~minors~~ individuals under
 170 the age of 21 years; and
- 171 (iii) Places where alcoholic beverages are offered for sale;
- 172 (B) In areas which are in the immediate vicinity, plain view, and under the continuous
 173 supervision of the proprietor of the establishment or an employee who will observe the
 174 purchase of cigarettes, tobacco products, tobacco related objects, alternative nicotine
 175 products, and vapor products from the vending machine; and
- 176 (C) In rest areas adjacent to roads and highways of the state.
- 177 (2) Violation of this subsection shall be punished as provided in subsection (b) of this
 178 Code section ~~for violation of subsection (a) of this Code section.~~

179 16-12-174.

- 180 (a) As used in this Code section, the term 'tobacco product sample' means a cigarette,
 181 tobacco product, alternative nicotine product, or vapor product distributed to members of
 182 the general public at no cost for purposes of promoting the product.
- 183 (b) It shall be unlawful for any person to distribute any tobacco product sample to any
 184 ~~person~~ individual under the age of ~~18~~ 21 years.
- 185 (c) A person distributing tobacco product samples shall require proof of age from a
 186 prospective recipient ~~if an ordinary person would conclude on the basis of appearance~~
 187 showing that such prospective recipient ~~may be~~ is not under the age of ~~18~~ 21 years.
- 188 (d) It shall be unlawful for any ~~person who has not attained~~ individual under the age of ~~18~~
 189 21 years to receive or attempt to receive any tobacco product sample.
- 190 (e) No person shall distribute tobacco product samples on any public street, sidewalk, or
 191 park within 500 feet of any school or playground when those facilities are being used
 192 primarily by persons under the age of ~~18~~ 21 years.
- 193 (f) Violation of this Code section shall be punished as a misdemeanor; provided, however,
 194 that punishment for an individual under the age of 21 years who commits a violation of this
 195 Code section shall be the same as that provided in paragraph (2) of subsection (b) of Code
 196 Section 16-12-171.

197 16-12-175.

- 198 (a) It shall be unlawful to offer for sale, barter for, or distribute any cigarettes, tobacco
 199 products, alternative nicotine products, or vapor products with labeling or packaging made
 200 to be attractive to individuals under the age of 21 years.
- 201 (b) The labeling or packaging of cigarettes, tobacco products, alternative nicotine products,
 202 or vapor products is attractive to an individual under the age of 21 years if such labeling
 203 or packaging does any of the following:

- 204 (1) Contains false or misleading statements;
 205 (2) Promotes overconsumption of such products;
 206 (3) Depicts the actual consumption of such products;
 207 (4) Depicts an individual under the age of 21 years consuming such products;
 208 (5) Makes any health, medicinal, or therapeutic claims about such products;
 209 (6) Includes images of such products;
 210 (7) Depicts images designed or likely to appeal to minors, including cartoons, toys,
 211 superheroes, or children, or any other likeness to images, characters, or phrases, such as
 212 'unicorn,' that are designed in any manner to be appealing to or encourage consumption
 213 by individuals under the age of 21 years;
 214 (8) Imitates or mimics trademark or trade dress of food products such as candies,
 215 cookies, juice boxes, soft drinks, or celebrity images that are or have been primarily
 216 marketed to individuals under the age of 21 years;
 217 (9) Contains images of food products primarily targeted to individuals under the age of
 218 21 years, such as juice boxes, soft drinks, cereals, candies, or desserts; or
 219 (10) Contains the terms 'candy' or 'candies' or variants in spelling, such as 'kandy' or
 220 'kandeez,' 'bubble gum,' 'cotton candy,' 'gummy bear,' 'cupcake,' or 'milkshake.'
 221 (c) Violation of this Code section shall be punished as a misdemeanor.

222 16-12-176.

223 (a) It shall be unlawful to sell, barter, or distribute, directly or indirectly, vapor products
 224 in this state or to an individual located within this state without providing notification to
 225 the Department of Revenue.

226 (b) The notification requirement under subsection (a) of this Code section shall include the
 227 name and sales tax number of the person selling, bartering, or distributing vapor products
 228 and the address at which such products are being sold, bartered, or distributed. The
 229 Department of Revenue shall provide information and a form for such notification on its
 230 website.

231 (c) Violation of this Code section shall be punished as a misdemeanor.

232 ~~16-12-175~~ 16-12-177.

233 (a) The provisions of this article, inclusive, shall be enforced through actions brought in
 234 any court of competent jurisdiction by the prosecuting attorney for the county in which the
 235 alleged violation occurred as well as through administrative citations issued by special
 236 agents or enforcement officers of the state revenue commissioner. Any fine collected for
 237 a violation of said provision shall be paid to the clerk of the court of the jurisdiction in

238 which the violation occurred. Upon receipt of a fine for any violation of said provision, the
239 clerk shall promptly notify the state revenue commissioner of the violation.

240 (b) The state revenue commissioner, acting through special agents or enforcement officers,
241 shall annually conduct random, unannounced inspections at locations where cigarettes,
242 tobacco products, alternative nicotine products, or vapor products are sold or distributed
243 to ensure compliance with this article. ~~Individuals~~ ~~Persons~~ under the age of ~~18~~ 21 years
244 may be enlisted to test compliance with this article; provided, however, that such ~~persons~~
245 individuals may be used to test compliance with this article only if the testing is conducted
246 under the direct supervision of such special agents or enforcement officers and written
247 parental consent for any individual under the age of 18 years has been provided. Any other
248 use of ~~persons~~ individuals under the age of ~~18~~ 21 years to test compliance with this article
249 or any other prohibition of like or similar import shall be unlawful and the person or
250 persons responsible for such use shall be subject to the penalties prescribed in this article.
251 The state revenue commissioner shall prepare annually for submission by the Governor to
252 the secretary of the United States Department of Health and Human Services the report
253 required by section 1926 of subpart I of part B of Title XIX of the federal Public Health
254 Service Act, 42 U.S.C. 300x-26.

255 ~~16-12-176~~ 16-12-178.

256 The state revenue commissioner shall administer and enforce this article and may make
257 reasonable rules and regulations for its administration and enforcement. The state revenue
258 commissioner may designate employees of the Department of Revenue for the purpose of
259 administering and enforcing this article and may delegate to employees of such department
260 any of the duties required of the state revenue commissioner pursuant to this article.

261 16-12-179.

262 (a) A prosecution under this article shall not preclude obtaining any other civil or criminal
263 remedy under any other provision of law.

264 (b) Any individual who suffers injury or damages as a result of a violation of this article
265 may bring an action, individually or as a representative of a class against the person or
266 persons engaged in such violations under the rules of civil procedure, to seek equitable
267 injunctive relief and to recover general and punitive damages sustained as a consequence
268 thereof in any court having jurisdiction over the defendant.

269 (c) A court shall award three times the actual damages for an intentional violation.

270 (d) If the court finds in any action that there has been a violation of this article, the
271 individual injured by such violation shall, in addition to other relief provided for in this

272 Code section and irrespective of the amount in controversy, be awarded reasonable
 273 attorney's fees and expenses of litigation incurred in connection with said action.

274 16-12-180.

275 This article shall be cumulative to and shall not prohibit the enactment of any other general
 276 and local laws, rules and regulations of state and local authorities or agencies, and local
 277 ordinances prohibiting such activities which are more restrictive than this article."

278 **SECTION 1-2.**

279 Said title is further amended by revising Code Section 16-13-30.6, relating to prohibition on
 280 purchase and sale of marijuana flavored products, as follows:

281 "16-13-30.6.

282 (a) As used in this Code section, the term:

283 (1) 'Marijuana flavored product' means any product, including lollipops, gumdrops, or
 284 other candy, which is flavored to taste like marijuana or hemp. The term shall include,
 285 but is not limited to, 'Chronic Candy,' 'Kronic Kandy,' or 'Pot Suckers.'

286 ~~(2) 'Minor' means any person under the age of 18 years.~~

287 ~~(3)~~(2) 'Person' means any natural person, individual, corporation, unincorporated
 288 association, proprietorship, firm, partnership, limited liability company, joint venture,
 289 joint stock association, or other entity or business organization of any kind.

290 (b) The General Assembly finds and determines that:

291 (1) According to the '2004 Monitoring the Future Study' conducted by the University of
 292 Michigan, 16.3 percent of eighth graders, 35.1 percent of tenth graders, and 45.7 percent
 293 of twelfth graders reported using marijuana at least once during their lifetimes;

294 (2) According to a 2002 Substance Abuse and Mental Health Service Administration
 295 report, 'Initiation of Marijuana Use: Trends, Patterns and Implications,' the younger
 296 children are when they first use marijuana, the more likely they are to use cocaine and
 297 heroin and become drug dependent as adults;

298 (3) Marijuana abuse is associated with many negative health effects, including frequent
 299 respiratory infections, impaired memory and learning, increased heart rate, anxiety, and
 300 panic attacks;

301 (4) Marijuana users have many of the same respiratory problems that are associated with
 302 tobacco use;

303 (5) According to the '2001 National Household Survey on Drug Abuse,' marijuana is the
 304 nation's most commonly used illicit drug, and more than 83,000,000 Americans aged 12
 305 and older have tried marijuana at least once;

306 (6) Use of marijuana has been shown to lower test scores among high school students,
307 and workers who smoke marijuana are more likely to have problems on their jobs;

308 (7) Federal, state, and local governments spend millions of dollars annually on programs
309 educating people about the hazards of drugs, and the marketing of marijuana flavored
310 substances would have an adverse impact upon these programs;

311 (8) The sale of marijuana flavored products, including lollipops and gum drops, which
312 claim 'every lick is like taking a hit' is a marketing ploy that perpetuates an unhealthy
313 culture and should not be permitted in the State of Georgia;

314 (9) Marijuana flavored products are a threat to ~~minors~~ individuals under the age of 21
315 years in the State of Georgia because such products give the false impression that
316 marijuana is fun and safe;

317 (10) Marijuana flavored products packaged as candy or lollipops falling into the hands
318 of unsuspecting ~~minors~~ individuals under the age of 21 years may serve as a gateway to
319 future use of marijuana and other drugs; and

320 (11) Merchants who sell marijuana flavored products are promoting marijuana use and
321 creating new customers for drug dealers in the State of Georgia.

322 Therefore, the purpose of this Code section is to prohibit the purchase and sale of
323 marijuana flavored products to ~~minors~~ individuals under the age of 21 years in the State of
324 Georgia.

325 (c) It shall be unlawful for any person knowingly to sell, deliver, distribute, or provide to
326 ~~a minor~~ any individual under the age of 21 years or knowingly possess with intent to sell,
327 deliver, distribute, or provide to ~~a minor~~ any individual under the age of 21 years any
328 marijuana flavored product in the State of Georgia.

329 (d) It shall be unlawful for any ~~minor~~ individual under the age of 21 years falsely to
330 represent to any person that such ~~minor~~ individual is ~~18~~ 21 years of age or older with the
331 intent to purchase or otherwise obtain any marijuana flavored product.

332 (e) Any person who violates subsection (c) of this Code section shall be guilty of a
333 misdemeanor and shall be subject to a fine of \$500.00 for each offense. Each sale in
334 violation of this Code section shall constitute a separate offense."

335 PART II

336 SECTION 2-1.

337 Said title is further amended by revising Code Section 16-12-2, relating to smoking in public
338 places, as follows:

339 "16-12-2.

340 (a) A person smoking tobacco or using an electronic smoking device in violation of
 341 Chapter 12A of Title 31 shall be guilty of a misdemeanor and, if convicted, shall be
 342 punished by a fine of not less than \$100.00 nor more than \$500.00.

343 (b) This Code section shall be cumulative to and shall not prohibit the enactment of any
 344 other general and local laws, rules and regulations of state or local agencies, and local
 345 ordinances prohibiting smoking and vaping which are more restrictive than this Code
 346 section."

347 **SECTION 2-2.**

348 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
 349 revising subsection (h) of Code Section 20-1A-10, relating to regulation of early care and
 350 education programs, as follows:

351 "(h) Persons who operate licensed, commissioned, or permitted early care and education
 352 programs shall post signs prohibiting smoking and vaping to carry out the purposes of
 353 Chapter 12A of Title 31."

354 **SECTION 2-3.**

355 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
 356 Chapter 12A, relating to the "Georgia Smoke-free Air Act of 2005," as follows:

357 "Chapter 12A

358 31-12A-1.

359 This chapter shall be known and may be cited as the 'Georgia Smoke-free Air Act ~~of 2005.~~'

360 31-12A-2.

361 As used in this chapter, the term:

362 (1) 'Bar' means an establishment that is devoted to the serving of alcoholic beverages for
 363 consumption by guests on the premises and in which the serving of food is only
 364 incidental to the consumption of those beverages, including, but not limited to, taverns,
 365 nightclubs, cocktail lounges, and cabarets.

366 (2) 'Business' means any corporation, sole proprietorship, partnership, limited
 367 partnership, limited liability corporation, limited liability partnership, professional
 368 corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether
 369 for profit or nonprofit.

370 (3) 'Electronic smoking device' means any product that contains or delivers any other
 371 substance intended for human consumption that can be used by a person to enable the
 372 inhalation of vapor or aerosol from such product, including, but not limited to, electronic
 373 cigarettes, electronic cigars, electronic pipes, hookahs, electronic hookahs, and vape pens.
 374 The term does not include a humidifier or similar device that emits only water vapor or
 375 an inhaler, nebulizer, or vaporizer regulated as a device by the United States Food and
 376 Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

377 ~~(3)~~(4) 'Employee' means an individual who is employed by a business in consideration
 378 for direct or indirect monetary wages or profit.

379 ~~(4)~~(5) 'Employer' means an individual or a business that employs one or more
 380 individuals.

381 ~~(5)~~(6) 'Enclosed area' means all space between a floor and ceiling that is enclosed on all
 382 sides by solid walls or windows, exclusive of doorways, which ~~extend~~ extends from the
 383 floor to the ceiling.

384 ~~(6)~~(7) 'Health care facility' means an office or institution providing care or treatment of
 385 diseases, whether physical, mental, or emotional, or other medical, physiological, or
 386 psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals
 387 or other clinics, including weight control clinics, homes for the chronically ill,
 388 laboratories, and offices of surgeons, chiropractors, physical therapists, physicians,
 389 dentists, and all specialists within these professions. ~~This definition term~~ shall include
 390 all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health
 391 care facilities. This definition term shall not include long-term care facilities as defined
 392 in paragraph (3) of Code Section 31-8-81.

393 ~~(7)~~(8) 'Infiltrate' means to permeate an enclosed area by passing through its walls,
 394 ceilings, floors, windows, or ventilation systems to the extent that an individual can smell
 395 secondhand smoke or vapor.

396 ~~(8)~~(9) 'Local governing authority' means a county or municipal corporation of the state.

397 ~~(9)~~(10) 'Place of employment' means an enclosed area under the control of a public or
 398 private employer that employees utilize during the course of employment, including, but
 399 not limited to, work areas, employee lounges, restrooms, conference rooms, meeting
 400 rooms, classrooms, employee cafeterias, and hallways. This term shall not include a ~~A~~
 401 ~~private residence is not a place of employment~~ unless it is used as a licensed child care,
 402 adult day-care, or health care facility. This term shall not include vehicles used in the
 403 course of employment.

404 ~~(10)~~(11) 'Public place' means an enclosed area to which the public is invited or in which
 405 the public is permitted, including, but not limited to, banks, bars, educational facilities,
 406 health care facilities, laundromats, public transportation facilities, reception areas,

407 restaurants, retail food production and marketing establishments, retail service
 408 establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms.
 409 This term shall not include a ~~A private residence is not a public place~~ unless it is used as
 410 a licensed child care, adult day-care, or health care facility.

411 ~~(11)~~(12) 'Restaurant' means an eating establishment, including, but not limited to, coffee
 412 shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives
 413 or offers for sale food to the public, guests, or employees, as well as kitchens and catering
 414 facilities in which food is prepared on the premises for serving elsewhere. The term shall
 415 include a bar area within any restaurant.

416 ~~(12)~~(13) 'Retail tobacco store' means a retail store utilized primarily for the sale of
 417 tobacco products or vapor products and accessories and in which the sale of other
 418 products is merely incidental.

419 ~~(13)~~(14) 'Secondhand smoke or vapor' means smoke or vapor emitted from lighted,
 420 smoldering, ~~or~~ burning, or using tobacco or an electronic smoking device when the
 421 person smoking or vaping is not inhaling, smoke or vapor emitted at the mouthpiece
 422 during puff drawing, and smoke or vapor exhaled by the person smoking or vaping.

423 ~~(14)~~(15) 'Service line' means an indoor line in which one or more persons are waiting for
 424 or receiving service of any kind, whether or not the service involves the exchange of
 425 money.

426 ~~(15)~~(16) 'Shopping mall' means an enclosed public walkway or hall area that serves to
 427 connect retail or professional establishments.

428 ~~(16)~~(17) 'Smoking and vaping' or 'smoking or vaping' means inhaling, exhaling, burning,
 429 or carrying any lighted tobacco product, including cigarettes, cigars, and pipe tobacco.
 430 The term also includes the use of an electronic smoking device.

431 ~~(17)~~(18) 'Smoking and vaping area' means a separately designated enclosed room which
 432 need not be entered by an employee in order to conduct business that is designated as a
 433 smoking and vaping area and, when so designated as a smoking and vaping area, shall
 434 not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break
 435 room.

436 ~~(18)~~(19) 'Sports arena' means enclosed stadiums and enclosed sports pavilions,
 437 gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling
 438 alleys, and other similar places where members of the general public assemble to engage
 439 in physical exercise, participate in athletic competition, or witness sports or other events.

440 31-12A-3.

441 Smoking and vaping shall be prohibited in all enclosed facilities of, including buildings
 442 owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any

443 political subdivision of the state, municipal corporation, or local board or authority created
 444 by general, local, or special Act of the General Assembly or by ordinance or resolution of
 445 the governing body of a county or municipal corporation individually or jointly with other
 446 political subdivisions or municipalities of the state.

447 31-12A-4.

448 Except as otherwise specifically authorized in Code Section 31-12A-6, smoking and vaping
 449 shall be prohibited in all enclosed public places in this state.

450 31-12A-5.

451 (a) Except as otherwise specifically provided in Code Section 31-12A-6, smoking and
 452 vaping shall be prohibited in all enclosed areas within places of employment, including,
 453 but not limited to, common work areas, auditoriums, classrooms, conference and meeting
 454 rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges,
 455 stairs, restrooms, and all other enclosed facilities.

456 (b) Such prohibition on smoking and vaping shall be communicated to all current
 457 employees by ~~July 1, 2005~~ September 1, 2020, and to each prospective employee upon
 458 ~~their~~ his or her application for employment.

459 31-12A-6.

460 (a) Notwithstanding any other provision of this chapter, the following areas shall be
 461 exempt from the provisions of Code Sections 31-12A-4 and 31-12A-5:

462 (1) Private residences, except when used as a licensed child care, adult day-care, or
 463 health care facility;

464 (2) Hotel and motel rooms that are rented to guests and are designated as smoking and
 465 vaping rooms; provided, however, that not more than 20 percent of rooms rented to
 466 guests in a hotel or motel may be so designated;

467 (3) Retail tobacco or vapor stores, provided that secondhand smoke or vapor from such
 468 stores does not infiltrate into areas where smoking is and vaping are prohibited under the
 469 provisions of this chapter;

470 (4) Long-term care facilities as defined in paragraph (3) of Code Section 31-8-81;

471 (5) Outdoor areas of places of employment;

472 ~~(6) Smoking areas in international airports, as designated by the airport operator;~~

473 ~~(7)~~(6) All workplaces of any manufacturer, importer, or wholesaler of tobacco products,
 474 of any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity
 475 set forth in Code Section 10-13A-2;

476 (7) All workplaces of any manufacturer, importer, or wholesaler of vapor products, of
 477 any vapor retailer, and all vapor product storage facilities;

478 (8) Private and semiprivate rooms in health care facilities licensed under this title that
 479 are occupied by one or more persons, all of whom have written authorization by their
 480 treating physician to smoke or vape;

481 (9) Bars and restaurants, as follows:

482 (A) All bars and restaurants to which access is denied to any person under the age
 483 of ~~18~~ 21 and that do not employ any individual under the age of ~~18~~ 21; or

484 (B) Private rooms in restaurants and bars if such rooms are enclosed and have an air
 485 handling system independent from the main air handling system that serves all other
 486 areas of the building and all air within the private room is exhausted directly to the
 487 outside by an exhaust fan of sufficient size;

488 (10) Convention facility meeting rooms and public and private assembly rooms
 489 contained within a convention facility not wholly or partially owned, leased, or operated
 490 by the State of Georgia, its agencies and authorities, or any political subdivision of the
 491 state, municipal corporation, or local board or authority created by general, local, or
 492 special Act of the General Assembly while these places are being used for private
 493 functions and where individuals under the age of ~~18~~ 21 are prohibited from attending or
 494 working as an employee during the function;

495 (11) Smoking and vaping areas designated by an employer which shall meet the
 496 following requirements:

497 (A) The smoking and vaping area shall be located in a nonwork area where no
 498 employee, as part of his or her work responsibilities, shall be required to enter, except
 499 such work responsibilities shall not include custodial or maintenance work carried out
 500 in the smoking and vaping area when it is unoccupied;

501 (B) Air handling systems from the smoking and vaping area shall be independent from
 502 the main air handling system that serves all other areas of the building, and all air
 503 within the smoking and vaping area shall be exhausted directly to the outside by an
 504 exhaust fan of sufficient size and capacity for the smoking and vaping area, and no air
 505 from the smoking and vaping area shall be recirculated through or infiltrate other parts
 506 of the building; and

507 (C) The smoking and vaping area shall be for the use of employees only.

508 The exemption provided for in this paragraph shall not apply to restaurants and bars;

509 (12) Common work areas, conference and meeting rooms, and private offices in private
 510 places of employment, other than medical facilities, that are open to the general public
 511 by appointment only; except that smoking and vaping shall be prohibited in any public
 512 reception area of such place of employment; and

513 (13) Private clubs, military officer clubs, and noncommissioned officer clubs.

514 (b) In order to qualify for exempt status under subsection (a) of this Code section, any area
515 described in subsection (a) of this Code section, except for areas described in paragraph (1)
516 of subsection (a) of this Code section, shall post conspicuously at every entrance a sign
517 indicating that smoking ~~is~~ and vaping are permitted.

518 31-12A-7.

519 Notwithstanding any other provision of this chapter, an owner, operator, manager, or other
520 person in control of an establishment, facility, or outdoor area may declare that entire
521 establishment, facility, or outdoor area as a ~~nonsmoking~~ place in which smoking and
522 vaping are prohibited. Smoking and vaping shall be prohibited in any place in which a sign
523 conforming to the requirements of subsection (a) of Code Section 31-12A-8 is posted.

524 31-12A-8.

525 (a) ~~'No Smoking' signs or the international 'No Smoking' symbol consisting of a pictorial~~
526 ~~representation of a burning cigarette enclosed in a red circle with a red bar across it may~~
527 ~~be clearly and conspicuously posted by the~~ The owner, operator, manager, or other person
528 in control in every public place and place of employment where smoking ~~is~~ and vaping are
529 prohibited by this chapter may clearly and conspicuously post:

530 (1) 'No Smoking' and 'No Vaping' signs; or

531 (2) The international 'No Smoking' symbol consisting of a pictorial representation or a
532 burning cigarette enclosed in a red circle with a red bar across it and the international 'No
533 Vaping' or 'No Electronic Cigarette' symbol consisting of a vapor pen emitting vapor
534 enclosed in a red circle with a red bar across it.

535 (b) All ashtrays shall be removed from any area where smoking ~~is~~ and vaping are
536 prohibited by this chapter by the owner, operator, manager, or other person in control of
537 the area, unless such ashtray is permanently affixed to an existing structure.

538 31-12A-9.

539 The Department of Public Health and the agency designated by each local governing
540 authority in this state may engage in a continuing program to explain and clarify the
541 purposes and requirements of this chapter to citizens affected by it and to guide owners,
542 operators, and managers in their compliance with it. The program may include print or
543 electronic publication of a brochure for affected businesses and individuals explaining the
544 provisions of this chapter.

545 31-12A-10.

546 The Department of Public Health and the county boards of health and their duly authorized
547 agents are authorized and empowered to enforce compliance with this chapter and the rules
548 and regulations adopted and promulgated under this chapter and, in connection therewith,
549 to enter upon and inspect the premises of any establishment or business at any reasonable
550 time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title.

551 31-12A-11.

552 The county boards of health may annually request other governmental and educational
553 agencies having facilities within the area of the local government to establish local
554 operating procedures in cooperation and compliance with this chapter.

555 31-12A-12.

556 This chapter shall be cumulative to and shall not prohibit the enactment of any other
557 general or local laws, rules, and regulations of state or local governing authorities or local
558 ordinances prohibiting smoking which are more restrictive than this chapter or are not in
559 direct conflict with this chapter.

560 31-12A-13.

561 (a) This chapter shall not be construed to permit smoking and vaping where ~~it is~~ such
562 activities are otherwise restricted by other applicable laws.

563 (b) Nothing in this chapter shall be construed as to repeal the provisions of Code Section
564 16-12-2.

565 (c) This chapter shall be liberally construed so as to further its purposes."

566 **PART III**

567 **SECTION 3-1.**

568 This Act shall become effective upon its approval by the Governor or upon its becoming law
569 without such approval and shall apply to offenses which occur on or after that date.

570 **SECTION 3-2.**

571 All laws and parts of laws in conflict with this Act are repealed.